

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WILLIE MCNAIR,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	No. 2:06-cv-00695-WKW-CSC
)	
RICHARD ALLEN, Commissioner,)	
Alabama Department of)	
Corrections, et al.,)	
)	
Defendants/Counter-Plaintiffs.)	

JAMES CALLAHAN,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	No. 2:06-cv-00919-WKW-CSC
)	
RICHARD ALLEN, et al.,)	
)	
Defendants/Counter-Plaintiffs.)	

DEFENDANTS' OBJECTIONS TO CERTAIN ITEMS
LISTED ON PLAINTIFFS' EXHIBIT LIST

Pursuant to the Court's scheduling order, Defendants submit the following written objections to certain items listed on the Exhibit List submitted by the Plaintiffs:

1. Defendants object to the videotapes of inmate autopsies produced by the Alabama Department of Forensics. There is no information on the videos that could not also be submitted by the still photographs listed on Plaintiffs' exhibit list. The tapes are cumulative and a waste of time. Moreover, a video of an autopsy is gruesome and prejudicial in ways that a still photograph is not (at least not to the same extent). Therefore, the videotapes may be excluded on the authority of F.R.E. 403.

2. Defendants object to the videotape of a documentary presented by MSNBC on Holman Prison, the facility where executions take place. Only a brief portion of the documentary concerns executions, and the rest concerns prison discipline and prison life. General conditions at Holman Prison are not the subject of this trial and such evidence is irrelevant and prejudicial. Therefore, any portion not directly concerning executions is inadmissible. FRE 402, 403. Further, the brief portions dealing with executions are cumulative and a waste of time, when this Court will be hearing directly from Warden Culliver and will itself view the execution facilities. FRE 403.

3. Plaintiffs list numerous items that concern executions or execution protocols in other states (the last entry on page 7 of Plaintiffs' exhibit list, the first five entries on page 8, and the last two entries on page 9). Defendants object to such items on grounds that executions in other states are conducted by different officials in different facilities, and such evidence is not relevant to the question of whether McNair and Callahan's executions will be properly conducted. FRE 402.

4. Plaintiffs list items that concern errors made by health care professionals in a medical setting, such as a hospital (the sixth and last items on page 8 and the first and second items on page 9). An execution is not a medical procedure and does not involve the same standard of care as a medical procedure. *See Walker v. Johnson*, 448 F.Supp.2d 719, 723 (E.D.Va. 2006) ("An execution by lethal injection is not a medical procedure and does not require the same standard of care as one.") *See also Timberlake v. Buss*, ___ F.Supp.2d ___, ___ 2007 WL 1280664 (S.D. Ind. May 1, 2007), *aff'd*, *Woods v. Buss*, ___ F.3d ___, 2007 WL 1302119 (7th Cir. May 3, 2007); *Workman v. Bredesen*, 486 F.3d 896 (6th Cir. 2007), *cert. denied*, 127 S.Ct 2160 (2007). Therefore, evidence

concerning medical procedures is irrelevant and inadmissible in a case concerning judicial executions, where wholly different standards apply. FRE 402.

5. Defendants also object to the 2007 American Veterinary Medical Association Guidelines on Euthanasia. Because of fundamental differences in physiology and setting, guidelines concerning animal euthanasia have no relevance in a case concerning the execution of human beings. FRE 402.

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CERTIFICATE OF SERVICE

This is to certify that on the 19th day of September, 2007, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to the following:

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